Filed 8/25/09 In re Martin G. CA4/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| In re Martin G. et al., Persons Coming Under the Juvenile Court Law. | |
| ORANGE COUNTY SOCIAL SERVICES AGENCY,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>A.G.,<br><br>Defendant and Appellant. | G041377 (cons. with G041460)<br><br>(Super. Ct. Nos. DP015738 & DP013142)<br><br>O P I N I O N |

Appeals from judgments of the Superior Court of Orange County, Maureen Aplin, Temporary Judge (pursuant to Cal. Const., art. VI, § 21) and James P. Marion, Judge. Appeals dismissed as moot.

Brent Riggs, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

* * *

A.G. appeals from the jurisdictional findings and dispositional order removing her son Martin, Jr. (Martin) from her custody. She claims the finding of jurisdiction cannot be upheld because the juvenile court failed to obtain her personal consent before entering her plea of nolo contendere. She also claims there is insufficient evidence to support the finding that there is a "substantial danger" to Martin's "physical health, safety, protection, or physical or emotional well-being" if he remained in her custody. (Welf. & Inst. Code, § 361, subd. (c)(1).)[1]

A.G. also appeals from the judgment terminating her parental rights to her daughter M.G. Her sole claim of error is that the summary denial of her section 388 petition, which occurred two months earlier, was erroneous because she made a prima facie case for relief.

While these appeals were pending, the juvenile court held a periodic review hearing in M.G.'s case and an 18-month review hearing in Martin's case. Pursuant to stipulation of the parties, the court returned the children to the parents under continued court supervision. The Orange County Social Services Agency (SSA) moved to dismiss the appeals as moot. We agree the appeals are moot and therefore dismiss.

FACTS

Five-month-old M.G. was detained by SSA in March 2006 after the mother was involuntarily hospitalized for hallucinations and bizarre behavior. The petition filed on M.G.'s behalf alleged that the mother had abused illegal drugs and had symptoms of mental illness, including auditory hallucinations. She had tested positive for methamphetamines at the time of M.G.'s birth. The petition was sustained, and M.G.

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

was removed from her mother and placed with her maternal aunt. The mother was ordered to participate in counseling and mental health services, complete a parenting class, submit to twice weekly random drug and alcohol testing, complete a drug treatment program, and provide proof of attendance at a 12-step program.

At the 12-month review hearing in May 2007, the mother was pregnant with Martin. She had three positive drug tests in December 2006 and January 2007; she was discharged from her drug program in April 2007 for lack of attendance. The mother did not test in February, had three negative tests in March, then stopped testing altogether. The social worker reported, "The child's parents are not ready to accept their addiction. They continue to blame everyone else for their problems and mishaps." The juvenile court terminated reunification services and set a permanent plan selection hearing (§ 366.26) for September 20, 2007; it ordered continued funding for a drug program "as long as there are no missed, positive or diluted tests."

Martin Jr. was born on July 2, 2007. SSA detained the child on July 31, when it became aware of his existence during a monitored visit between the mother and M.G.. The petition filed on Martin's behalf alleged he was at risk for abuse and neglect because the mother had used drugs during her pregnancy with him, she had not completed a substance abuse program, and she had failed to comply with her case plan in M.G.'s proceedings. SSA recommended no reunification services for Martin based on her failure to reunify with M.G.

After Martin was detained, the mother began drug testing again. In a report dated September 20, 2007, the social worker reported the mother had been testing regularly with negative results and visiting both children regularly. Nevertheless, the social worker stated, "The child's parents have not dealt with their drug abuse problems. [They] still blame everyone else for their problems." The mother separated from the father in early August.

In September, the mother filed a section 388 petition asking the court to change its order terminating reunification services and reinstate them, or to return M.G. to her custody. She alleged she was employed, working on her case plan, and drug testing regularly. She claimed she had been sober "since February of 2007." The mother believed the new order would be in M.G.'s best interests because "we have a very strong mother-child bond. I know she misses me a lot. I feel like I am the best person to care for M.G. because of our close relationship and because of my great knowledge of her needs."

Martin's jurisdiction hearing was held on October 5, 2007. The mother had signed a Waiver of Rights form (JV-190) which indicated the petition had been read to her and she understood it and she wished to plead no contest. She initialed each right she was waiving and each consequence of her plea. Counsel for the mother also signed the form, indicated she had "explained and discussed with my client the rights and consequences of pleading no contest." The juvenile court asked the mother, "Are these your initials, Ma'am?"

The mother: "Yes."

The court: "Is this your signature found on the same page?"

The mother: "Yes."

The court: "Did you read and understand this form?"

The mother: "Yes."

The court: "You understand you're waiving your right to jurisdiction at this time?"

The mother: "Yes."

The court: "Counsel join in the waiver?"

Counsel for the mother: "Yes, Your Honor."

The court: "Court finds a knowing, voluntary, intelligent waiver of constitutional rights, as advised, and counsel has joined."

The court also received a form with proposed orders and findings, signed by SSA, the mother's counsel, and the child's counsel. The form indicated that the parents "plea nolo to the petition" as amended. The court recited the findings on the form, but when it came to the plea, it interrupted itself to ask the mother her name and did not recite the entry of the plea: "The father, Martin G[.], Senior, and the mother A[.] G[.] – do you go by N[.] or G[.]?" The mother responded: "It's N[.], N[.] G[.]." The court continued, "Thank you. [¶] To the petition dated August 2nd, 2007, which has been amended by interlineation . . . . The court finds the allegations of the amended petition . . . true by a preponderance of the evidence . . . ." The minute order reflected that the mother and father "pleads nolo contendere."

On October 16, 2007, the juvenile court granted a hearing on A.G.'s section 388 petition and continued that hearing, together with M.G.'s permanent plan selection hearing, to November 6, 2007. By this time, the children were placed together in the home of Josephina C. They were then placed in a prospective adoptive home in January 2008. The parents visited consistently.

The section 388 hearing and the permanent plan selection hearing were repeatedly continued. The mother filed a supplemental declaration on August 20, 2008, in which she alleged she had adequate housing for her children, she continued to be employed at Jack In The Box restaurant, she had completed a drug program, she had been drug testing regularly with only one diluted test in July 2008, and she attended 12-step meetings once a week.

The hearing on the section 388 petition finally began on August 20, 2008 and was completed on September 18, 2008. The court denied the petition and set M.G.'s permanent plan selection hearing and Martin's disposition hearing for September 24. The permanent plan selection hearing began on that date. The parties stipulated that the testimony from the section 388 hearing could be used for the permanent plan selection hearing. The parties completed testimony for the permanent plan selection hearing on

October 1, 2008, and the court began Martin's disposition hearing on October 23. Testimony for the disposition hearing was completed on November 4, 2008. Both cases were argued on November 5 and November 6, and the court ruled in both cases on November 10.

The court declared Martin a dependent child and found there was clear and convincing evidence that returning him to his parents would be detrimental. It ordered reunification services to the parents. The court stated, "I find that [the parents] are still naïve in lot[s] of respects, immature, not fully engaged, but they still have to show the court that they've overcome their drug addiction.. . . . [¶] . . . [¶] I know you've been sober for a while, but I want to see a lot of A.A. meetings. I want to see maybe a new – getting in a new drug program. And I want to see you not missing any – and I want to see no positive tests. So that's what I'm looking for. So I do that with the idea and understanding that there are caretakers that really care for Martin. I know they're probably going to be disappointed with that particular decision . . . ."

As to M.G., the court found she was adoptable. Because of her bond with Martin, however, the court found that the termination of parental rights and adoption would not be in her best interests. Accordingly, the court ordered a permanent plan of long-term foster care for M.G. and specifically ordered that the two siblings remain placed together.

On December 18, 2008, the mother filed a notice of appeal from the November 13 judgment declaring Martin a dependent child and removing him from parental custody. On January 5, 2009, the mother filed a notice of appeal from the November 13 order selecting long-term foster care as a permanent plan for M.G. and the September 18 denial of her section 388 motion. On this court's own motion, the two appeals were consolidated for all purposes on January 14, 2009.

Shortly before oral argument before this court, SSA filed a request for judicial notice of SSA's report to the juvenile court dated June 2, 2009 and the juvenile

court's minute order of that same date returning the children to the parents under a plan of family maintenance pursuant to the parties' stipulation. SSA also moved to dismiss the appeal as moot based on the new developments. We granted the request for judicial notice and ordered SSA to provide us with the parties' stipulation. SSA then filed a second request for judicial notice of the stipulation, which we also granted. The mother filed opposition to the motion to dismiss.

DISCUSSION

At the hearing on June 2, 2009, the mother signed a stipulation in Martin's case stating that "conditions still exist which would justify initial assumption of jurisdiction under Sec[tion] 300." She also stipulated that "[c]ontinued supervision [is] necessary," and "return of the child to [the] Parents would not create a substantial risk of detriment to the physical or emotional well being of the child."

In *In re Eric A.* (1999) 73 Cal.App.4th 1390, this court dismissed a father's appeal challenging the juvenile court's jurisdiction findings because he later stipulated at the six-month review hearing that conditions still existed that would justify the assumption of jurisdiction. "In plain English, that means at the time of the six-month review, [the father] conceded the allegations in the petition were true. By agreeing that the juvenile court's initial assumption of jurisdiction was justified by conditions that 'still exist,' [the father] waived his right to complain about the court's action on appeal." (*Id.* at pp. 1394-1395.) Like the father in *Eric A.*, the mother here has waived her right to challenge the juvenile court's assumption of jurisdiction over Martin.

The mother has not, however, waived her right to challenge the disposition order removing Martin from her custody. On appeal, she contends there was insufficient evidence to support the juvenile court's finding by clear and convincing evidence that there would be a substantial danger to Martin's physical health, safety, protection, or physical or emotional well-being if he were returned to her custody. (§ 361, subd. (c)(1).) At the hearing on June 2, she stipulated to a finding that the return of Martin to

parental custody would *not* create a substantial risk of detriment to him, which did not undermine her argument on appeal. (Cf. *In re Dani R.* (2001) 89 Cal.App.4th 402.)

Although the mother's appeal is not waived, the June 2 order returning Martin to her custody has rendered her appeal moot because she has already received the remedy she seeks – return of Martin to her custody. (*In re Pablo D.* (1998) 67 Cal.App.4th 759, 761.) The mother's attempt to appeal from the denial of her section 388 petition seeking the return of M.G. to her custody is also moot. As with Martin, she has already received the remedy she seeks. (*Ibid.*)

DISPOSITION

The appeals are dismissed.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

IKOLA, J.